

**THE SUPREME COURT
OF THE
FEDERATED STATES OF MICRONESIA**

**WRITTEN EXAMINATION FOR ADMISSION
TO PRACTICE BEFORE THE SUPREME COURT
OF THE FEDERATED STATES OF MICRONESIA**

MARCH 6, 2008

ADMINISTERED IN POHNPEI AND YAP

**SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA**

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INSTRUCTIONS

YOU HAVE FIVE (5) HOURS TO COMPLETE THIS TEST. THIS IS DESIGNED TO PROVIDE AMPLE TIME FOR CONSIDERATION OF THE QUESTIONS AND ISSUES PRESENTED, AND TO PERMIT AN OPPORTUNITY TO FRAME YOUR ANALYSIS. BEFORE STARTING TO WRITE, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY WHAT IS BEING ASKED. THEN CONSIDER THE ORGANIZATION OF YOUR ANSWER. ANSWERING QUESTIONS NOT ACTUALLY ASKED WILL BE REGARDED AS INDICATING INADEQUATE UNDERSTANDING AND MAY RESULT IN LOSS OF POINTS. PLEASE TRY TO WRITE OR PRINT YOUR ANSWER LEGIBLY. AN ILLEGIBLE ANSWER MAY RESULT IN A LOSS OF POINTS. A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AS FOLLOWS:

<u>QUESTION NO.</u>	<u>POINTS</u>
I.	18
II.	2
III.	10
IV.	10
V.	13
VI.	10
VII.	11
VIII.	10
IX.	12
X.	4
TOTAL	<u>100</u>

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHICS QUESTION IS III. THE EVIDENCE QUESTIONS ARE I & II.

ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Evidence

I. (18 points)

During business hours, a man entered the Superhealth Pharmacy, pointed a revolver at the pharmacist and demanded a bottle of morphine, a dangerous substance controlled under 11 F.S.M.C. 1111 *et seq.* The pharmacist complied and the assailant ran from the pharmacy with the morphine. Based upon information secured in their investigation, the police lawfully arrested Daniel for the crime several days later.

Charged with armed robbery, Daniel proceeded to trial advancing the defense he was at home when the robbery occurred.

At trial, during the prosecution's case-in-chief, the following occurred:

A. (4 points) Michael, a close acquaintance of Daniel, testified that Michael had personally observed Daniel possess and consume morphine on a number of occasions during the two years before the robbery.

B. (4 points) The court admitted into evidence a properly authenticated letter, dated ten days before the robbery, written by Daniel to his clergyman, which letter stated: "I'm going to rob a pharmacy to get some morphine. I'm suffering."

C. (3 points) Police Officer Alert testified that, as he was placing Daniel in the patrol car after his arrest on the street, Daniel suddenly turned and ran, but was recaptured less than a quarter mile away.

D. (4 points) Police Officer Alert testified that Wit, an eyewitness now deceased, identified Daniel from an array of photographs of men who bore a resemblance to Daniel, by stating to Officer Alert, "He's the one who robbed Superhealth. I'm positive."

E. (3 points) Lockup, a long-time prison inmate, testified that on the second day of Daniel's incarceration, Daniel stated to him in the course of a conversation: "I was in the Superhealth Pharmacy when it was robbed. But I didn't do it."

Assume that in each instance all appropriate objections were made and that the Rules of Evidence in the state court in which the case was tried are identical in all respects to the FSM Supreme Court's Rules of Evidence. Were the items of evidence properly admitted? Discuss.

Evidence

II. (2 points)

Rocky was a farmer who often sold his produce to Bullwinkle's Seaside Market and Gas Station. He usually tied his boat up at the landing next to the market. A set of concrete steps leads from the landing up to Bullwinkle's Seaside Market. One day as Rocky returned to his boat, he tripped on the concrete steps and was injured.

Rocky sued Bullwinkle for damages. He alleged that Bullwinkle was negligent in failing to keep the steps in good repair and that that was the cause of his injuries. Bullwinkle denies that the steps are on his property.

At trial, Rocky offered evidence that on the day after Rocky's accident Bullwinkle's employees repaired the broken step on which Rocky had tripped. Bullwinkle objects. How should the judge rule and why?

**III.
(10 points)**

Boris represented Wilma in a divorce action by Wilma against Fred. During the course of the representation, Boris submitted bills totaling \$8,000 for his legal services to Wilma. After credit for payments by Wilma, the amount due on her obligation was \$2,500. Boris wrote Wilma a letter informing her that he would perform no further services in the case until she paid her account's outstanding balance.

In response to Boris's letter, Wilma called Boris and informed him that because of financial problems she could not then pay past due or additional legal fees. She asked Boris if there was any arrangement under which he would be willing to continue to represent her. Boris stated that he would continue to represent her if she would agree to pay him for his services, in addition to the \$2,500 already owed, 25% of any property award she would receive in the divorce proceedings. Wilma told Boris she would think about it and call him back.

Several days later, Wilma called Boris and told him that she had decided to retain another lawyer. She asked Boris to give her the file in her case. Boris informed Wilma that if she wanted the case file, she would have to pay the balance of her account and also sign a release of general liability. Wilma said she would try to raise the money and would call Boris back in a couple of days.

The next day, Fred's lawyer, Natasha, called Boris to ask Boris to withdraw from his representation of Wilma. Natasha reminded Boris that several years ago Boris had represented a now-dissolved partnership, of which Fred was a partner, in an unsuccessful effort by the partnership to acquire a government construction contract. Boris refused to withdraw.

Discuss all ethical considerations raised by Boris's conduct.

**IV.
(10 points)**

Pallas was riding on a motorcycle operated by Ceres on Pohnpei. She sustained a severe head injury when a car driven by Juno collided with Ceres's motorcycle. The accident took place at an intersection, with Ceres on one road and Juno on a road intersecting Ceres's road from the left. Both Juno's and Ceres's roads were controlled by stop signs. The accident left Pallas with permanent amnesia concerning the accident and the events leading to the collision.

Pallas, a citizen of Yap, sued Juno, a citizen of Pohnpei, in the FSM Supreme Court for \$1 million in damages for personal injury. Pallas's complaint alleges that Juno failed to stop at the stop sign and that Juno's negligence was the proximate cause of Pallas's injuries. Juno's answer denied that he had failed to stop and that there was any negligence on his part. In response to Juno's interrogatories, Pallas stated that her negligence claim was based on Juno's failure to bring his car to a stop before proceeding through the intersection, despite a plainly visible stop sign regulating traffic on Juno's road. She also stated, on information and belief, that Ceres's motorcycle had reached the intersection first and had proceeded through it only after coming to a complete stop.

Before either side could take his deposition, Ceres died of causes unrelated to the accident. The only other witness to the collision was Vesta, who was driving a pickup truck directly behind Juno's car. When Vesta's deposition was taken, Vesta testified that she saw Juno come to a complete stop at the intersection but that Ceres did not stop. She also stated that the stop sign on Juno's road was partially obscured by tall weeds, which made it hard to see the stop sign until quite near the intersection. At her own deposition, Pallas testified that because of her accident-induced amnesia, she had no personal recollection of the events surrounding the accident.

After discovery had closed, Juno moved for summary judgment. Juno supported his motion with: (1) Pallas's answer to the interrogatories; (2) Vesta's deposition; (3) Juno's own affidavit to the effect that the stop sign on his side of the intersection was hard to see because of the tall weeds growing in front of it but that he had come to a complete stop before he entered the intersection, whereas Ceres had not; and (4) Pallas's deposition testimony about her amnesia and lack of personal memory of the events surrounding the collision.

Pallas opposed the summary judgment motion. Her opposition cited the conflicting facts raised by her complaint's allegation that Juno failed to stop and Juno's denial of that allegation in his answer. In support of her opposition, Pallas offered: (1) an affidavit of the police officer who had responded to the accident, stating that the stop sign on Juno's side of the intersection was not hidden by weeds, but was plainly visible; and (2) Pallas's own affidavit stating, on information and belief, that Ceres must have arrived at the intersection first, come to a complete stop, and only then proceeded into the intersection, and

General

that Juno must have entered the intersection without stopping or even slowing down.

Should the court grant or deny Juno's summary judgment motion? Explain.

V.
(13 points)

One afternoon, around 3:15 p.m., Max, a Chuuk state police officer, was walking on his way to work the night shift, which began at 4:00 p.m. He was accompanied by his adult nephew, Jim, who happened to be going in the same direction, Max was wearing his police uniform and carrying a small plastic bag with a can of corned beef inside for his dinner.

As Max and Jim approached XYZ store, an XYZ store employee ran out of the door yelling that a young, drunk kid had just rushed out of the store with a portable CD player and was getting away on a motorcycle. Just then, Max and Jim saw a middle-aged man, Zed, with a small plastic bag getting onto a bicycle. In the excitement of the moment and thinking that the XYZ store employee said "bicycle," Max yelled to the man twice, "Hey you, stop, or I'll knock your block off!" Zed, who was hard of hearing, got on his bicycle and began to pedal away.

Officer Max took the corned beef can out of the bag and threw it at Zed. Jim, wanting to help Max, threw a stick in front of Zed's bicycle which got caught in the front tire's spokes, causing the bicycle to stop suddenly. Max's corned beef can hit Zed in the back of the head. Zed and his bicycle landed on top of a young child, Cal, who, as a result, suffered a broken arm.

Zed was knocked dizzy. Zed, bleeding from his forehead and nose, struggled to get up. Max rushed over and wrestled Zed to the ground, slapped his head, and yelled, "Why didn't you stop?" Max handcuffed Zed while Jim held him down. Max told Zed that he was under arrest for stealing from XYZ Store and placed him in a police vehicle which had pulled up when it saw all the commotion. The police vehicle took Max and Zed to the police station, where Zed was questioned about the stolen CD player.

During the questioning, Zed complained of dizziness and pain to his right side. After 45 minutes of questioning, and one hour of waiting for a police vehicle to return from patrol, Zed was transported to the state hospital and treated for a severe concussion and a dislocated shoulder. His concussion and resulting headaches were severe enough that Zed missed four weeks of work. Zed's sick pay ran out after the first two weeks.

Later that evening the police arrested a drunk young man riding around on a motorcycle who had a CD player with him. The XYZ Store employee was brought to the police station and identified the young man as the thief and the CD player as XYZ's. As soon as Max learned this, he visited Zed in the hospital and apologized and told him that all charges had been dropped.

General

A. (10 points). Zed comes to you to ask about suing someone about what had happened to him. What causes of action may Zed have and against whom? What defenses may be raised? Explain how the damages will be measured.

B. (3 points) Cal's mother also asks you about suing someone for Cal's broken arm. Who might Cal sue and on what basis? What defenses?

**VI.
(10 points)**

Officer Don submitted to an FSM Supreme Court judge an application to search Ken's house for evidence of crystal methamphetamine ("ice") possession. To support his application, Don submitted his own affidavit stating that according to one Sam, a confidential informant who had previously provided reliable information, Ken is a large "ice" user and part-time dealer who often kept a quantity of "ice" at home and who had just received a new "ice" shipment from overseas.

It is true that Sam gave that information to Officer Don, and it is true that Sam had been a reliable informant in the past. Also, Officer Don believed the information to be true. Actually, the information was false. Sam was trying to harass Ken because he and Ken were rivals for the affections of the beautiful Leilani. Officer Don did not quiz Sam further about the tip, but did not behave recklessly in believing Sam's story or in submitting the affidavit.

The judge issued the search warrant. No "ice" was found. A handgun was found. Ken was charged with the possession of an illegal firearm. Before trial, Ken moved to suppress all the "fruits" of the search, including the handgun, on the ground that the warrant was improperly procured. Assuming that Ken demonstrates all of the above facts (including that had the truth been stated in the affidavit there would have been no probable cause to search Ken's house for "ice"), should the trial judge order the "fruits" suppressed (and the case thus dismissed)? Discuss.

**VII.
(11 points)**

Godzilla Used Cars, Inc., a Japanese corporation, has recently begun sending shipments of used cars to Palau, under a working relationship with Yeti, for Yeti to sell in Palau. Title to the cars remains with Godzilla, but when the cars are sold, title is transferred from Godzilla to the buyer. Twenty-five percent (25%) of the sale price is retained by Yeti and the rest is remitted to Godzilla. Yeti is a life-long resident and citizen of Palau.

Kong, an FSM citizen and resident and citizen of Yap, traveled to Palau in October, 2007. He knew that Palau had plenty of stone suitable for conversion into stone money, and is considering trying to revive the mining of stone money there. Kong also had other business on Palau.

When Kong arrived in Palau, Kong saw Godzilla's used cars in Yeti's lot. Looking around, Kong finds a 2006 Rav4 with the sales price of \$3,200, a far better price than Kong had seen for cars on Yap. Kong asked Yeti if the car was in good condition. Yeti actually had no idea about the car's condition but assured Kong that the car was in excellent condition, having only been driven by an elderly Japanese woman to the local train station to drop off her salaryman husband for his commute to work. Yeti said, "I guarantee you're getting a good deal here."

In reality, the car had been owned by the Pokemon rental agency and had been driven great distances daily during the past year – over 28,000 miles although the odometer had been turned back by Godzilla to read 3,200 miles.

Kong bought the Rav4, planning to use it for a few weeks in Palau and then sell it in Palau before leaving.

However, the Rav4 performed so well that when Kong was to return to Yap, Kong decided to keep the Rav4. Kong had the Rav4 shipped to Yap. Unfortunately, about a week after the Rav4 arrived on Yap it becomes apparent that it had severe problems, which included, in part, grinding wheel bearings, overheating, smoke and oil drops emanating from the exhaust, and lastly, the right front tire rolled off as Kong was driving, causing the Rav4 to swerve suddenly and smash into a tree.

Kong filed a complaint in the FSM Supreme Court in Yap, naming Godzilla and Yeti as defendants and alleging that each are liable for fraud and misrepresentation, breach of contract, breach of warranty, and negligence. Service of process was made on Yeti in Palau and Godzilla in Japan.

Yeti and Godzilla each file a motion to dismiss for lack of jurisdiction over the subject matter and the person. Discuss both theories in each motion and decide how the court should rule on these motions.

**VIII.
(10 points)**

Isaac, a citizen of a different state, applied for credit at a local store. The credit application contained only two terms, which all applicants agreed to by signing the application: 1) that the applicant agreed to pay any charges within 60 days of the store's monthly billing date, and 2) that if legal action was necessary to collect past due accounts, the applicant agreed that he would be liable for reasonable attorney's fees as expenses of collection. Isaac completed and signed the application and was granted a credit account. For several years, Isaac promptly paid his monthly bills, but after he lost his national government employment through a reduction-in-force, he fell behind in his payments.

When Isaac's last monthly bill of \$710.20 had been past due for five months, the store filed suit against Isaac in the FSM Supreme Court. The complaint sought the \$710.20 plus reasonable attorney's fees. Isaac was properly served a summons and complaint. Isaac, realizing that he had no defenses, did not answer the complaint. The store then filed, along with a supporting affidavit about the amounts due, a request for an entry of default and for a default judgment for \$710.20, plus \$85.22 for 8 months prejudgment interest (at 18%), \$25 for the cost of serving the complaint and summons, and \$225 in attorney's fees calculated at \$100 per hour for 2¼ hours work. The court clerk properly entered the default.

A. (4 points) Should the clerk also enter the default judgment as requested or should the judge? Why or why not?

B. (6 points) Assume that a default judgment is entered. How much should the default judgment be for and why?

**IX.
(12 points)**

Laurel, a local boat builder, comes to your law office and shows you copies of the following e-mails:

Sent: Mon, 22 Oct 2007 1:43 pm

Dear Laurel,

I'd like you to build me a 16-foot boat of your usual style. It should be white, with blue trim. Please have it ready by the weekend of November 23-25 because I want to go fishing that weekend with my family. I understand that the price will be \$900.

**Sincerely,
Hardy**

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Sent: Wed, 24 Oct 2007 9:24 am

Dear Hardy,

You didn't give me much time, so I've already started work on the boat. I hope I can finish in time. Please send me \$120 right away to help me buy materials. Thank you for the business. :)

**Yours,
Laurel**

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Sent: Sat, 1 Dec 2007 8:37 am

Dear Hardy,

Your boat's now ready. Sorry I didn't finish it by Nov. 23, but it usually takes me 2 months to finish a boat. Also, you never sent the \$120 I asked for and there was no blue paint on island. Please come & get the boat & pay me my \$900 right away.

Laurel

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Sent: Sun, 2 Dec 2007 2:48 pm

Laurel

I'm very disappointed! You didn't finish the boat I wanted in time for my family's visit. They live in Oregon & I had to rent another boat for the weekend. I see you've used red paint instead of the blue I wanted. I won't take the boat & won't pay you anything. Rent for the other boat was \$75. I demand that you pay that & another \$100 for ruining my weekend. :(

Hardy

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General

Laurel comes to you seeking legal advice. Discuss.

**X.
(4 points)**

Discuss the constitutionality of the following under the FSM Constitution:

- A. a state statute imposing a tax of 1% on all interest earned on bank deposits within the state, and**
- B. A state constitutional provision prohibiting any person, not a native-born citizen of the state, from acquiring title to land in that state.**